

Jennifer L. Larson (JL 8114)  
HELLER EHRMAN LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036  
Telephone: (212) 832-8300  
Facsimile: (212) 763-7600

James G. Ryan (JR 9446)  
Marianne McCarthy (MM 8807)  
Cullen and Dykman LLP  
100 Quentin Roosevelt Boulevard  
Garden City, New York 11530  
Telephone: (516) 357-3700  
Facsimile: (516) 357-3792

*Attorneys for Plaintiff Philip Morris USA Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

No. 07 Civ. 8359 (LAK)(GWG)

A & V MINIMARKET, INC., a New York  
corporation doing business as A & V MINI  
MARKET, *et al.*,

Defendants.

**REQUEST FOR CERTIFICATE OF DEFAULT**

TO THE CLERK OF THE COURT:

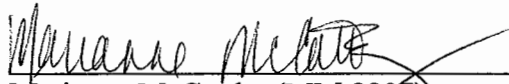
Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Civil Rule 55.1,

Plaintiff Philip Morris USA Inc. hereby requests that you enter default in this action against Defendant R H S Grocery, Inc., a New York corporation doing business as RHS Deli Grocery ("RHS Deli Grocery"). Default should be entered because RHS Deli Grocery has not answered or responded to the Complaint within the time prescribed by Rule 12 of the Federal Rules of

Civil Procedure or otherwise appeared in this action. The facts justifying the entry of default are set forth in the attached Affidavit of Marianne McCarthy in Support of Request for Certificate of Default, and a proposed Clerk's Certificate of Default is also attached hereto.

Dated: January 24, 2008

CULLEN AND DYKMAN LLP

A handwritten signature in dark ink, appearing to read "Marianne McCarthy", is written over a horizontal line.

Marianne McCarthy (MM 8807)  
Cullen and Dykman LLP  
100 Quentin Roosevelt Boulevard  
Garden City, New York 11530  
Telephone: (516) 357-3700  
Facsimile: (516) 296-9155

*Of counsel:*

Jennifer L. Larson (JL 8114)  
HELLER EHRMAN LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036  
Telephone: (212) 832-8300  
Facsimile: (212) 763-7600

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Defendants.

**AFFIDAVIT OF MARIANNE MCCARTHY  
IN SUPPORT OF REQUEST FOR CERTIFICATE OF DEFAULT**

STATE OF NEW YORK            )  
  )  
COUNTY OF NASSAU         )

ss.:

MARIANNE MCCARTHY, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am Of Counsel to the law firm of  
Cullen and Dykman LLP, co-counsel to Heller Ehrman LLP, attorneys for Plaintiff Philip Morris

USA Inc. I am fully familiar with the facts and circumstances surrounding this action. I make this declaration in support of Philip Morris USA Inc.'s request for a Certificate of Default against Defendant R H S Grocery, Inc., a New York corporation doing business as RHS Deli Grocery ("RHS Deli Grocery"), pursuant to Fed. R. Civ. P. 55(a) and Local Civil Rule 55.1.

2. Upon information and belief, RHS Deli Grocery is not an infant, in the military, or an incompetent person.

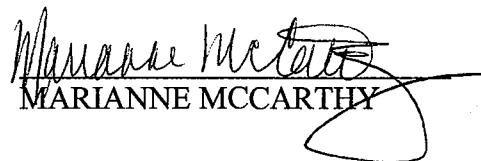
3. Philip Morris USA Inc. commenced this action on September 26, 2007 by the filing of the Summons and Complaint. A true and correct copy of the Summons and Complaint (without exhibits) is annexed hereto as Exhibit A.

4. In accordance with Fed. R. Civ. P. 4(h)(1), Philip Morris USA Inc. effected service of process on RHS Deli Grocery by serving a copy of the Summons and Complaint on Jose Cruz, a manager and authorized agent of RHS Deli Grocery on October 1, 2007, at the business address of 1223 Boston Road, Bronx, New York. These facts are set forth in the Affidavit of Service of Bethel Debnam, sworn to October 2, 2007, a true and correct copy of which is annexed hereto as Exhibit B.

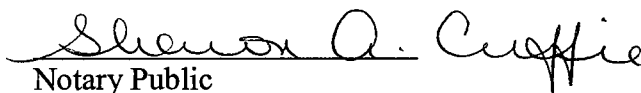
5. Under Fed. R. Civ. P. 12(a)(1)(A), RHS Deli Grocery was required to answer or respond to the Complaint no later than October 22, 2007.

6. RHS Deli Grocery has not answered the complaint or otherwise defended the action, and the time for RHS Deli Grocery to do so has expired.

WHEREFORE, on behalf of Philip Morris USA Inc., I respectfully request a Certificate of Default against RHS Deli Grocery.

  
MARIANNE MCCARTHY

Sworn to before me this  
24<sup>th</sup> day of January, 2008.

  
Notary Public

Sharon A. Cuffie  
Notary Public, State of New York  
No. 01CU6020584  
Qualified in Suffolk County  
Commission Expires March 01, 20 11

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Defendants.

**CLERK'S CERTIFICATE OF DEFAULT**

I, J. Michael McMahon, Clerk of the United States District Court for the Southern District of New York, do hereby certify that a copy of the Summons and Complaint in this action, filed September 26, 2007, according to the proofs of service, was served upon Defendant R H S Grocery, Inc., a New York corporation doing business as RHS Deli Grocery ("RHS Deli Grocery"), in accordance with Rule 4(h)(1) of the Federal Rules of Civil Procedure. In

particular, on October 1, 2007, Jose Cruz, a manager and authorized agent of RHS Deli Grocery, accepted service of the Summons and Complaint.

I further certify that the docket entries indicate that RHS Deli Grocery has not filed an answer or otherwise moved with respect to the Complaint.

The default by Defendant RHS Deli Grocery is hereby noted.

Dated: New York, New York

\_\_\_\_\_, 2008

J. Michael McMahon  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk